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LUEDEKA, NEELY & GRAHAM, P.C. P O BOX 1871 KNOXVILLE, TN 37901			ART UNIT 3753	PAPER NUMBER

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/020,011

Applicant(s)
Westbrooks, Jr., et al.

Examiner
Ljiljana V. Ciric *LC*

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 13, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Jun 12, 2002 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other:

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DETAILED ACTION

Drawings

1. The corrected or substitute drawings were received on June 12, 2002. These drawings are approved.

Specification

2. The abstract of the disclosure is objected to because it does not sufficiently summarize the organization of the inventive apparatus. Additionally, the references to the “hot” side and the “cold” side of the inventive apparatus appear self-contradictory (i.e., “operable to maintain *both* the *hot* side and the *cold* side of each tray at a *cold* temperature”--in other words, if the *hot* side is *maintained at a cold temperature* it is no longer a *hot* side); it would be clearer and more consistent to refer to a “hot food side” and a “cold food side”, for example. Correction is required. See MPEP § 608.01(b).

3. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions,

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wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

4. The title of the invention is overly generic and is thus not sufficiently descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
5. The use of the trademark "incoloy" [page 14, line 14] has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

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Claim Objections

6. Claims 1 through 20 are objected to because of the following informalities, for example: “a hot side” [claim 1, line 1; claim 9, line 1; claim 13, line 1; and other occurrences] and “the hot side” [claim 1, line 2; claim 1, line 3; and other occurrences] should be replaced with “a hot food side” and “the hot food side”, respectively, for improved consistency and clarity; “a cold side” [claim 1, line 2; claim 9, line 2; claim 13, line 2; and other occurrences] and “the cold side” [claim 1, lines 2-3; claim 9, lines 2-3; claim 13, lines 2-3; and other occurrences] should be replaced with “a cold food side” and “the cold food side”, respectively, for improved consistency and clarity; “of heating” [claim 1, line 3, line 9, line 3; and other occurrences] should be replaced with “to heat” or similar for improved grammatical correctness; “a cold food side, a hot food side” [claim 1, lines 6-7; claim 9, lines 6-7; claim 13, lines 6-7; and other occurrences] should be replaced with “a cold food side and a hot food side” for improved grammatical correctness and clarity; “a first compartment” [claim 1, line 8; claim 15, line 6; and other occurrences] and “the first compartment” [claim 3, line 2; and other occurrences] should be replaced with “a compartment” and “the first compartment”, respectively, for improved clarity since no second compartment is recited in the claims; “a blower for circulating heat from the heating source and cold from the refrigeration coil” [claim 1, lines 21-22] should be replaced with “a blower for circulating heated air from the heating source and cold air from the refrigeration coil” or similar, as appropriate, for improved clarity and idiomatic correctness; the dependency of claim 16 should be changed so that claim 16 depends from claim 15 and not from claim 1 in order to provide

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proper antecedent basis for the limitations in claim 16; “the trays” [claim 20, line 4-5; claim 20, lines 6-7] should be replaced with “food trays” for improved consistency and grammatical correctness; “and each portage unit being configured” [claim 20, line 9] should be replaced with “with each portage unit being configured” for improved readability and grammatical correctness; “a second of the portage units” [claim 20, lines 13-14] should be replaced with “a second one of the portage units” for improved consistency; and, “the portage unit” [claim 20, line 16] should be replaced with “the portage units” for improved consistency and grammatical correctness.

Appropriate correction is required.

Claim Rejections - 35 U.S.C. § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 2, 3, and 6 through 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "closely" in each of at least claims 2, 6, 8, 9, 13, 14 is a relative term which renders the claim indefinite. The term "closely" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Thus, as used to qualify the dimensions of the receiver and relative tolerances between the receiver and the food trays received

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thereby, this term renders these quantities indeterminate and also renders indefinite the intended scope of protection sought by the claims and all claims depending therefrom.

Claim Rejections - 35 U.S.C. § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. As best can be understood in view of the indefiniteness of claims 9 through 11 and 13, claims 9 through 11, 13, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by *Westbrooks, Jr. (U.S. Patent No. 5,655,595, of record)*.

Westbrooks, Jr. (U.S. Patent No. 5,655,595, of record) discloses a rethermalization system and method for use with food trays having a hot food side and a cold food side essentially as claimed, including: food trays 106, each having a cold food side 120 and a hot food side 122; a cassette or cart 80 configured for receiving a plurality of trays as shown in Figures 12 and 13, the cassette or cart 80 including a plurality of spaced apart dividers 102, wherein the dividers 102 are substantially vertically aligned with one another and spaced apart a distance from one another so as to define a receiver or gap 109 between each divider, each receiver or gap 109 being dimensioned so as to receive one of the food trays 106 so that when the cassette or cart 80 is loaded with the plurality of trays 106, the dividers 102 and the trays 106 received in the receivers or gaps 109 of the dividers 102 define a thermal barrier 100 between the hot food side 122 and

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the cold food side 120 of each tray 106; a rethermalization unit or wall unit 30 configured to receive the cassette or cart 80 when it is loaded with trays, the rethermalization unit or wall unit 30 including a first thermal system including cold plenum vent 40 directly adjacent a first interior side of the rethermalization unit or wall unit 30, a second thermal system directly including hot plenum vent 42 directly adjacent a second interior side of the rethermalization unit or wall unit 30, and a compressor system including compressor 200 operatively associated with the first and second thermal systems; a microprocessor-based or programmed microcomputer control system 250 for operating the first and second thermal systems and the compressor system to effect desired thermal treatment of food on the food trays 106; a cassette placement sensor or proximity sensor 48 located in the rethermalization unit or wall unit 30 as shown in Figure 8 and operatively associated with the control system 250 for sensing initial placement of the cassette or cart 80 within the rethermalization unit or wall unit 30, wherein the control system 250 initiates operation of the first and second thermal systems when the cassette or cart 80 is placed in the rethermalization unit or wall unit 30 to maintain both the hot side and the cold side of each tray at a desired cold temperature [see column 11, lines 13-14]; and, temperature sensors 236 and 238 broadly readable on the temperature monitors as recited in the claims of the instant invention. Little or no patentable weight is given to intended use and functional language in the claims.

The reference thus reads on the claims.

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Claim Rejections - 35 U.S.C. § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. As best can be understood in view of the indefiniteness of the claims, claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Westbrooks, Jr. (U.S. Patent No. 5,655,595, of record)* in view of *Chang*.

As described in greater detail above, *Westbrooks, Jr.* discloses a rethermalization apparatus and method for use with food trays having a hot food side and a cold food side essentially as claimed, including a compressor system including compressor 200 and a control system 250. However, *Westbrooks, Jr.* does not necessarily disclose the compressor system as

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including a compressor system pressure monitor associated with the compressor system and with the control system 250 for inputting pressure information relating to the compressor system into the control system 250, wherein when the pressure of the compressor system exceeds a predetermined value the control system 250 generates a signal to cease operation of the compressor system.

Nevertheless, it is well-known in the art of refrigeration system design and taught by *Chang* to provide a pressure sensor 226 for measuring the refrigeration or compressor system pressure and to input information relating to this sensed pressure into the control system 106 corresponding to the refrigeration or compressor system 104, wherein the control system 106 is programmed to shut down the refrigeration or compressor system 104 when the sensed pressure exceeds a predetermined value in order to prevent over pressurization of the refrigeration or compressor system 104 as well as any undesirable refrigerant leakage which might result from such an over pressurization.

Thus it would have been obvious to one skilled in the art at the time of invention to modify the rethermalization system of *Westbrooks, Jr.* by adding a compressor system pressure monitor or sensor which is operatively coupled to the control system in order to prevent compressor or refrigeration system malfunction due to system over pressure and reduce repair time as taught by *Chang*

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Allowable Subject Matter

14. Claims 1, 4, 5, 15 through 18, and 20 are objected to due to minor informalities in the claims as noted above in greater detail, but are otherwise allowable over the prior art of record and will be allowed pending correction of the abovementioned informalities.

15. Claims 2, 3, and 6 through 8 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, and the objections in the form of minor informalities as set forth in this Office action.

16. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record does not disclose nor suggest a rethermalization system for use with food trays, wherein, for example, the rethermalization unit has a first thermal system disposed directly adjacent a first interior side of the rethermalization unit--the first thermal system specifically including a heating source, a refrigeration coil, and also has a second thermal system disposed adjacent a second interior side of the rethermalization unit--the second thermal system specifically including a first and second refrigeration coils and a blower.

The prior art of record does not disclose nor suggest a rethermalization system for use with food trays including plural portage units configured for receiving food tray cassettes, wherein the portage units are each equipped with each of a latch pin and a latch system at opposite ends thereof, and wherein the rethermalization unit also has a latch pin for releasable engagement with the latch system of a portage unit.

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The prior art of record also does not disclose nor suggest a method for handling food trays to be selectively refrigerated and rethermalized including, in combination, the steps of providing a plurality of interconnectable portage units configured for receiving a cassette and for transferring and removing the same from a rethermalization unit, loading the trays on the cassette and loading the cadette onto a first one of the portage units, interconnecting the loaded portage unit to a second one of the portage units, transferring the loaded cassette between the portage units while the portage units are interconnected, connecting the second one of the portage units to the rethermalization unit, and transferring the cadette loaded with the trays from the second one of the portage units to the rethermalization unit.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. *Pennington et al.*, *Tippmann et al.*, *Beizermann*, and *Miyazaki et al.*, each discloses a divided food storage and/or handling system.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (703) 308-3925. While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached on (703) 308-0101. The fax phone number is (703) 305-3463.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

lvc

September 16, 2003


LJILJANA V. CIRIC
PRIMARY EXAMINER
ART UNIT 3743